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LANSING

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Analysis of Enrolled House Bills 4433-7

Topic: Tax Tribunal Procedures and Process
Sponsor: Representatives Bieda, Young, Sheen, Melton, and Calley
Co-Sponsors: Representative Condino was the only co-sponsor who was not also a sponsor listed on the original bills. Over 40 House members asked to be listed as co-sponsors when given the opportunity to do so when the bill passed the House.

Committee: House Taxation
Senate Finance

Date Introduced: March 8, 2007

Date Enrolled: April 29, 2008 (House Bills 4434, 4435, and 4437)
April 30, 2008 (House Bills 4433 and 4436)

Date of Analysis: April 30, 2008

Position: The Department of Labor & Economic Growth supports the bills.

Problem/Background: The Michigan Tax Tribunal is an administrative court in the Department of Labor & Economic Growth charged with resolving tax disputes. Although most of its work involves property tax issues, the Tribunal also hears cases involving other taxes. The Tribunal is apportioned between two divisions; Entire Tribunal and Residential Property and Small Claims. The Entire Tribunal utilizes a formal hearing process and is intended to resolve more complicated appeals. However, with the exception of principle residence and qualified agriculture exemptions, any case may be filed in the Entire Tribunal. Hearings in this division are formal with a record prepared and the parties are typically represented by attorneys. A Tribunal member or administrative law judge presides over these proceedings. Hearings in the more complex cases can span many days.

By contrast, the Residential Property and Small Claims Division employs an informal hearing process. No formal record is taken of hearings and parties typically represent themselves. The hearings typically require only a half hour or less. Only certain cases may be filed in the Residential Property and Small Claims Division, including disputes involving principal residence, poverty, and qualified agriculture exemptions, and disputes involving taxes other than property taxes where the amount in dispute is under \$6,000, and disputes involving property taxes where the state equalized value in contention is less than \$100,000.

The primary purpose of the bills is to increase the Tribunal's efficiency. One of the bills establishes a process for mediation, which should reduce the Tribunal's case backlog and provide faster resolution in some cases. Another bill permits cases filed in the small claims division to be held telephonically if the parties agree. Because the statute currently requires these cases to be heard in the county in which the property is located, or in an adjoining county, travel time and expenses will be reduced and cases can be

scheduled faster. Also, the small claims division filing threshold for taxes other than property taxes will be increased, allowing taxpayers the ability to take advantage of a less costly means of settling a dispute.

Description of Bill: These five bills amend the Tax Tribunal Act.

House Bill 4433 provides for mediation of certain cases and for the certification and appointment of mediators by the Tax Tribunal. A mediation conference would be exempt from both the Freedom of Information and Open Meetings Acts.

House Bill 4434 requires that a proposed decision of a hearing officer or referee in a Residential Property and Small Claims Division case be considered and decided by one or more Tribunal members. The bill also creates the Michigan Tax Tribunal Fund in the Department of Labor & Economic Growth. Fees paid to the Tribunal would be deposited into the fund and would not revert to the General Fund at the end of the fiscal year. Money in the fund would be used solely for operation of the Tribunal.

House Bill 4435 deletes the prohibition of more than 3 members of the Tribunal being members of the same profession.

House Bill 4436 increases the threshold for non-property cases in the Residential and Small Claims Division cases from the current \$6,000 to \$20,000 or less. This jurisdictional limitation has not been increased since 1992. The bill permits a proceeding in the Division to take place at a location mutually agreed upon by all parties or by use of amplified telephonic or video conferencing equipment.

House Bill 4437 repeals the provision in the act that requires a hearing in the Residential and Small Claims Division to be held in the evening upon request. Such a request has never been made. Moreover, it would be difficult to locate a public building in which to hold a hearing in the evening, and the Tribunal's staff has expressed concerns about safety if required to attend such hearings.

Summary of Arguments

Pro: The bills provide taxpayers more effective access to the Tribunal by providing for more convenient means for getting a case heard. Both Tax Tribunal and taxpayer costs should be reduced and cases should be resolved more quickly.

Mediation may prove to be an effective, low-cost method of resolving tax disputes. Unfortunately, it is not possible to create an effective process under current law. By assuring that confidential information disclosed in mediation is not subject to the Freedom of Information Act and the mediation proceeding itself to the Open Meetings Act, House Bill 4433 makes it possible for the Tribunal to create a credible mediation process.

Removing the language that limits Tribunal members to no more than three of any one profession will permit the Tribunal to have one more attorney member. The Tribunal believes that this will not only strengthen the Tribunal, it will increase the Tribunal's credibility.

Con: The only con that has been expressed came from the Michigan Assessor's Association. Their concern is that by removing the limitation on attorney members, the possibility of filling this "at large" position with another assessor is lessened.

Response: The current assessor's position has been vacant for almost two years due to the inability to recruit a level IV assessor to take this position.

Fiscal/Economic Impact

(a) Department

Budgetary: Mediation should reduce the amount of time needed to resolve cases and permit resources to be focused on reducing the backlog of cases.

Revenue: House Bill 4434 allows the Tribunal to carry over unexpended fee revenue from year to year and earn daily interest based on the State of Michigan Common Cash Fund. This will allow the Tribunal to maximize use of its revenues.

Comments:

(b) State

Budgetary: According to a House Fiscal Agency analysis, reduced expenditures combined with dedicating fees to Tax Tribunal operations should eliminate the need to use approximately \$460,000 in Corporations and Securities fees to fund operations. These funds would then be available for use elsewhere in the budget.

Revenue: The bills will have no direct impact on state revenues.

Comments:

(c) Local Government

Comments: Many of the cases that will now be resolved more quickly will be property tax cases. Quicker resolution of these cases should benefit local governments.

Other State Departments: The Department of Treasury has an interest in these bills.

Any Other Pertinent Information: According to a Tax Tribunal memo dated January 26, 2006, the proposals have been presented to many stakeholder groups, including the Michigan Assessors Association, the Michigan State Chamber of Commerce, the State Bar of Michigan, the Michigan Association of Certified Public Accounts, the Institute for Professionals in Taxation, and various other groups.

Administrative Rules Impact: The Tribunal would be required in House Bill 4433 to promulgate rules to implement the proposed mediation procedures.